

# **ATTACHMENT AD**

## MEMORANDUM OF COOPERATION

Dated as of May 9, 2002

This Memorandum of Cooperation (this "MOC") sets forth the principal terms and conditions with respect to the proposed business relationship by and among (a) Midwest Independent Transmission System Operator, Inc. ("MISO"); (b) Southwest Power Pool, Inc. ("SPP"), (c) PJM Interconnection, L.L.C. ("PJM"), and together with SPP and MISO, the "RTOs"; and (d) the following parties (the "TRANSLink Participants"): (i) Xcel Energy Services Inc., as agent for Northern States Power Company, a Minnesota corporation, Northern States Power Company (Wisconsin), a Wisconsin corporation, Public Service Company of Colorado, a Colorado corporation, and Southwestern Public Service Company, a New Mexico corporation, (ii) MidAmerican Energy Company, an Iowa corporation, (iii) Interstate Power and Light Company, an Iowa corporation, (iv) Corn Belt Power Cooperative, an Iowa cooperative corporation, (v) Omaha Public Power District, a political subdivision of the State of Nebraska, and (vi) Nebraska Public Power District, a political subdivision of the State of Nebraska, pursuant to which the Parties (as defined below) will, among other things, agree to cooperate in the formation of a Standard Market (as defined below) (the "Transaction"). Collectively, MISO, PJM, SPP and the TRANSLink Participants shall be referred to herein as the "Parties." It is anticipated that the TRANSLink Participants may become members of TRANSLink Development Company, LLC ("Bridgeco/TRANSLink"), a limited liability company that will be formed and be a predecessor to TRANSLink Transmission Company, LLC ("TRANSLink").

**WHEREAS**, The Parties believe that the implementation of a robust, non-discriminatory joint and common wholesale electric energy market among MISO, PJM and SPP (the "Standard Market") will facilitate wholesale markets, both in states where retail electric industry restructuring is occurring, as well as states where retail restructuring is not being actively pursued;

**WHEREAS**, The Parties believe that the development of the Standard Market can further the safe and reliable operation of the electric power grid;

**WHEREAS**, The Parties believe the approach they have committed to work toward will result in the timely, efficient, and cost-effective introduction of the Standard Market in a manner that ensures a robust and reliable implementation in the geographic area to be covered by TRANSLink;

**WHEREAS**, The Parties are all committed to implement the Standard Market in a manner that achieves the objectives of providing customers and suppliers access to a single regional energy market while minimizing the costs for implementation;

**WHEREAS**, The Parties are committed to working cooperatively to meet the needs of the respective states in their regions;

**WHEREAS**, The Parties view this MOC as one component of PJM/MISO and SPP's efforts toward developing the Standard Market across the entirety of the MISO/PJM/SPP Control Areas;

**WHEREAS**, The Parties are committed to the development of a role for independent transmission companies ("ITCs") that meet ITC business needs while still ensuring the successful operation of a robust competitive wholesale market; and

**WHEREAS**, This MOC is intended to complement other efforts being undertaken by MISO, PJM and SPP, working with their stakeholders, toward developing the Standard Market and crafting a role for independent transmission companies that complements the Standard Market.

**NOW**, therefore, the Parties to this MOC agree as follows:

**I. Transaction.**

1. **Standard Market.** The Parties hereby agree to cooperate in the formation of their respective infrastructures to expedite the implementation of the Standard Market.

2. **Development of Plan/Evaluation of Key Issues.** The Parties agree to cooperate and work in good faith towards developing a plan that will determine and evaluate the relative priority and critical path of issues unique to the TRANSLink region that need to be resolved in order to implement the Standard Market in the TRANSLink region ("Plan") as soon as practicable. The Parties will work in good faith to complete an initial draft of the Plan within ninety (90) days of the effective date of this MOC.

3. **Preparation of Report.** Upon the earlier of the completion of the development of the Plan or the expiration of the ninety (90) day period referred to in Article I, Section 2 above, the Parties in good faith shall jointly prepare a report (the "Report") that summarizes the status of the Plan and related issues including setting forth the positions of the Parties and the areas in which the Parties differ, if any.

4. **Implementation of Plan.** Provided that the Parties have reached agreement on a Plan, the Parties will then commence negotiations towards reaching agreement regarding the implementation of the Plan as expeditiously and economically as practicable.

5. **Network Analysis Tools.**

(a) The Parties hereby agree, for the timely implementation of the Standard Market, to evaluate whether the Plan will include the development of on-line network analysis

tools, including, among others: (i) Static Assessment; (ii) Dynamic Assessment; and (iii) Voltage Stability Assessment.

(b) The Parties hereby agree to evaluate whether the Plan will include the need to identify, develop and implement the tools necessary for a common market infrastructure (the "Market Infrastructure") for generator and load bidding that provides participants the flexibility to self-schedule their resources and to engage in bilateral trades, as well as transactions through the Standard Market.

#### **6. Principles; Additional Agreements.**

(a) The Parties hereby agree that the implementation of the common Standard Market may initially include the formation of non-contiguous sub-regions that each have their own balancing market and periodicity for balancing based on the sub-regions' unique system characteristics.

(b) The Parties hereby agree that the collaboration intended by this MOC may allow MISO and PJM to use the geographic region to be served by TRANSLink as a resource to determine how best to securely and cost-effectively implement LMP in the Midwest.

(c) The agreements and understandings set forth in this MOC will not encompass resolution of the roles and functions of MISO, PJM and/or TRANSLink once the common Standard Market is implemented. Resolution of such issues will be made either by mutual agreement among the Parties or pursuant to the direction of the Federal Energy Regulatory Commission ("FERC").

(d) All of the above will be evaluated in the context of achieving an end-state that leads to effective and economic implementation of the FERC's Standard Market Design.

#### **7. Intellectual Property.**

(a) All Intellectual Property (as defined below), and modifications to and enhancements and derivatives of such Intellectual Property (i) owned by a Party on or before the effective date of this MOC; or (ii) developed by a Party after the effective date of this MOC, shall remain the sole property of such Party, and no right, title or interest to such Intellectual Property shall be granted to any other Party.

(b) Except as expressly set forth in a subsequent binding agreement, no Party shall use, convey or disclose the Intellectual Property of another Party without the express written consent of such other Party and nothing herein shall be construed to be a license or other transfer by a Party of any Intellectual Property or interests therein to another Party.

(c) For purposes of this MOC:

(i) “Intellectual Property” means all patent rights (including patent applications, disclosures and Inventions (as defined below)), rights of priority, mask work rights, copyrights, moral rights, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction of the world including trademarks, trade names, logos, service marks, and other designations of source; and

(ii) “Inventions” means any idea, design, concept, technique, method, discovery or improvement conceived of and actually or constructively can be reduced to practice for which a patent application is or may be filed in the United States or in any foreign country, or for which a patent has issued in the United States or in any foreign country.

## **II. General Terms.**

1. **Amendments.** Amendments to this MOC may be made only in a writing signed by the Parties hereto.

2. **Press Releases; Confidentiality.**

(a) Except as may otherwise be required by law, the timing and content of all press releases and other public announcements specifically relating to this MOC shall be reasonably determined, in good faith, by agreement of all of the Parties. The Parties agree that a press release will be issued upon execution of this MOC.

(b) The parties agree to promptly execute a suitable confidentiality agreement that provides for the maintenance of confidentiality of proprietary knowledge, data and information including the intellectual property of the respective parties.

3. **Alternative Dispute Resolution.** In carrying out the tasks outlined in this MOC, if the Parties or a subset of the Parties are unable to resolve differences at the staff level or if any of the Parties’ staffs determine that they lack sufficient direction to proceed with any task, any staff representative may refer the matter to the chief executive officers of the RTOs and, in the case of the TRANSLink Participants, the chairperson of the Executive Committee or chief executive officer (the foregoing persons referred to as the “Executives”). In such event, such Executives agree to schedule a meeting to attempt to resolve these issues or provide direction, as appropriate, on a priority basis. The Executives may seek stakeholder input in connection with any attempt to resolve disputed issues associated with the design and operation of the Standard Market.

4. **Fees and Expenses.** Each Party shall pay its respective fees and expenses incurred in connection with the Transaction.

5. **Liability.** No Party shall be liable to another Party for monetary damages of any kind (including direct, consequential or indirect damages, economic loss, court costs or attorneys’ fees) in connection with the performance of this MOC.

6. **Counterparts; Facsimile Signatures.** This MOC may be executed in one or more counterparts by the Parties hereto, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Facsimile counterpart signatures shall be acceptable and binding.

7. **Assignment.** No Party may assign this MOC in whole or in part without the prior written consent of all of the other Parties hereto. Notwithstanding the foregoing: (a) the TRANSLink Participants may assign this MOC to Bridgeco/TRANSLink upon its formation; and (b) Bridgeco/TRANSLink may subsequently assign this MOC to TRANSLink upon its formation.

8. **Governing Law.** This MOC shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law.

9. **Termination.** Notwithstanding the foregoing or any provision contained herein to the contrary, at any time after the end of the ninety (90) day period referred to in Article I, Section 2 of this MOC, in the event that all Parties have not reached agreement on all components of the Plan, each Party, in such Party's sole discretion, upon written notice to each of the other Parties, may terminate its participation in this MOC, and, in such event, such Party shall have no further obligations hereunder except that the provisions of Article I, Section 7 shall continue to remain in effect.

**[Signatures appear on the following pages]**

## **MEMORANDUM OF COOPERATION**

### **SIGNATURE PAGE**

In witness whereof, effective as of the date first written above, the undersigned has duly executed this Memorandum of Cooperation.

**MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**, a Delaware non-stock, not for profit corporation.

By: \_\_\_\_\_  
Name: Stephen G. Kozey  
Title: Vice President, General Counsel and Secretary

Address:  
701 City Center Drive  
Carmel, Indiana 46032

Facsimile: 317-249-5912

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### **SIGNATURE PAGE**

In witness whereof, effective as of the date first written above, the undersigned has duly executed this Memorandum of Cooperation.

**PJM INTERCONNECTION, L.L.C.,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Phillip G. Harris  
Title: President and Chief Executive Officer

Address:  
955 Jefferson Avenue  
Norristown, Pa. 19403

Facsimile: 610-666-4281



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In witness whereof, effective as of the date first written above, the undersigned has duly executed this Memorandum of Cooperation.

**THE TRANSLINK PARTICIPANTS:**

**XCEL ENERGY SERVICES ,INC.**

**AS AGENT FOR NORTHERN STATES POWER COMPANY**, a Minnesota corporation  
**NORTHERN STATES POWER COMPANY (WISCONSIN)**, a WI. corp.  
**PUBLIC SERVICE COMPANY OF COLORADO**, a Colorado corp.  
**SOUTHWESTERN PUBLIC SERVICE COMPANY**, a New Mexico corp.

**MIDAMERICAN ENERGY COMPANY**, an Iowa corporation

**INTERSTATE POWER AND LIGHT COMPANY**, an Iowa corporation

**CORN BELT POWER COOPERATIVE**, an Iowa cooperative corporation

**OMAHA PUBLIC POWER DISTRICT**, a political subdivision of the State of Nebraska

**NEBRASKA PUBLIC POWER DISTRICT**, a political subdivision of the State of Nebraska

By: **XCEL SERVICES, INC.**

**AUTHORIZED REPRESENTATIVE**

By: \_\_\_\_\_

Name: Audrey A. Zibelman

Title: Vice President, Transmission

Address:

Xcel Energy  
414 Nicollet Mall, 6<sup>th</sup> Floor  
Minneapolis, MN 55401

Fascimile:612-330-7801

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In witness whereof, effective as of the date first written above, the undersigned has duly executed this Memorandum of Cooperation.

**SOUTHWEST POWER POOL, INC.**, an Arkansas corporation.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fascimile: \_\_\_\_\_